



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-1068]

RIN 1625-AA00

Safety Zones; TEMCO Grain Facilities; Columbia and Willamette Rivers

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing temporary safety zones around the TEMCO grain facilities on the Columbia River in Kalama, WA and the Willamette River in Portland, OR. These safety zones extend to the waters of the Columbia and Willamette Rivers, respectively, approximately between the navigable channel and the facility described. These safety zones are being established to ensure that protest activities relating to a labor dispute involving these facilities do not create hazardous navigation conditions for vessels in the navigable channel or vessels attempting to moor at the facilities.

DATES: This rule is effective [insert date of publication in the Federal Register] and has been enforced with actual notice since December 7, 2012 and it will be enforced until [insert date

30 days from date of publication in the Federal Register].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-1068]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ensign Ian P. McPhillips, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone (503) 240-9319, e-mail [MSUPDXWWM@uscg.mil](mailto:MSUPDXWWM@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

## A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable since delayed promulgation may result in injury or damage to the maritime public, vessel crews, the vessels themselves, the facilities, and law enforcement personnel from protest activities that could occur prior to conclusion of a notice and comment period.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register because to do otherwise would be impracticable since the arrival of grain-shipment vessels cannot be delayed by the Coast Guard and protest activities are unpredictable and potentially volatile and may result in injury to persons, property, or the environment. Delaying the effective date until 30 days after publication may mean that grain-shipment vessels calling on the Columbia Grain or

United Grain Corporation facilities will have arrived and/or departed before the end of a 30-day period. This delay would eliminate the safety zones' effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic during the 30-day period.

#### B. Basis and Purpose

These safety zones are being implemented to help ensure the safe navigation of maritime traffic on the Columbia and Willamette Rivers while grain-shipment vessels transit to and from the TEMCO grain facilities. These safety zones apply equally to all waterway users and are intended to allow maximum use of the waterway consistent with safe navigation and to ensure that protestors and other river users are not injured by deep-draft vessels with maneuvering characteristics with which they may be unfamiliar. In addition, these safety zones around the grain facilities are intended to ensure that protestors are not injured due to the effects of the strong river currents around the facilities' docks, piers, and wharves.

#### C. Discussion of the Final Rule

This rule establishes temporary safety zones around the TEMCO grain facility located on the Columbia River in Kalama, WA and the TEMCO grain facility located on the Willamette River in Portland, OR.

The safety zone around the TEMCO grain facility in Kalama,

WA is enclosed by three lines and the shoreline: line one starting on the shoreline at 45-59'10" N/122-50'09" W then heading 150 yards offshore to 45-59'09" N/122-50'14" W then heading up river 385 yards to 45-58'58" N/122-50'07" then heading 150 yards to the shoreline ending at 45-59'00" N/122-50'01" W. In essence, these boundaries extend from the shoreline of the facility 150 yards onto the river from each corner of the facility and encompass all waters and structures therein. No person or vessel may enter or remain in the safety zone unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

The safety zone around the TEMCO grain facility in Portland, OR is also enclosed by three lines and the shoreline: line one starting on the shoreline at 45-32'10" N/122-40'34" W then heading 150 yards offshore to 45-32'09" N/122-40'39" W then heading up river 275 yards to 45-32'01" N/122-40'33" then heading 150 yards to the shoreline ending at 45-32'04" N/122-40'28" W. In essence, these boundaries extend from the shoreline of the facility 150 yards onto the river from each corner of the facility and encompass all waters and structures therein. No person or vessel may enter or remain in the safety zone unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

This rule has been enforced with actual notice since

December 07, 2012 and it will be enforced until 30 days from date of publication in the Federal Register.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this rule will restrict access to the regulated areas, the effect of this rule will not be significant because: (i) the safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the safety zones; (iii) the safety zones will effect limited geographical locations for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

##### 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-

612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) the safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the safety zones; (iii) the safety zones will effect limited geographical locations for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We believe that this rule and the process by which it was drafted adhere to the federalism principles outlined in Executive Order 13132. The Coast Guard has coordinated with the officials from the states of Oregon and Washington in drafting this rule. By allowing state enforcement of this rule, it is in accord with



paragraph (h) of section 2 of the Executive Order, which encourages recognition of responsibility of localities and their sub-units to pursue objectives through their own means. This rule puts no obligation on state or municipal governments, but simply allows for their participation in enforcement activities.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. In preparing this temporary rule, the Coast Guard carefully considered the rights of lawful protestors. The safety zones created by this rule do not prohibit members of the public from assembling on shore or expressing their points of view from locations on shore. In addition, the Captain of the Port has identified waters adjacent to this safety zone where those desiring to do so can assemble and express their views without compromising the safety navigational safety. These suggested protest areas are as follows: TEMCO Kalama Facility from the shoreline at 45-59'10" N/122-50'09" W a line heading offshore 150 yards to 45-59'09" N/122-50'14" W then heading up river 350 yards to 45-58'58" N/122-50'07" W then heading to the shoreline, ending at 45-59'00" N/122-50'01" W. TEMCO Irving Facility from the shoreline at 45-32'10" N/122-40'34" W a line heading offshore 150 yards to 45-32'09" N/122-40'39" W then heading up river 275 yards to 45-32'01" N/122-40'33" then heading to the shoreline, ending at 45-32'04" N/122-40'28" W.

Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the

National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of temporary safety zones around the Columbia Grain facility on the Willamette River in Portland, OR and the United Grain Corporation facility on the Columbia River in Vancouver, WA. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T13.237 to read as follows:

§ 165.T13.237 Safety Zones; TEMCO Grain Facilities; Columbia and Willamette Rivers.

(a) Definitions. As used in this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(3) *Navigation Rules* means the Navigation Rules, International-Inland.

(4) *Official Patrol* means those persons designated by the Captain of the Port to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Federal Law Enforcement Officers authorized to enforce this section are designated as the Official Patrol.

(5) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(6) *Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

(7) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) Locations. The following areas are safety zones:

(1) TEMCO Kalama: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone enclosed by three lines and the shoreline: line one starting on the shoreline at 45-59'10" N/122-50'09" W then heading 150 yards offshore to 45-59'09" N/122-50'14" W then heading up river 385 yards to 45-58'58" N/122-50'07" then heading 150 yards to the shoreline ending at 45-59'00" N/122-50'01" W.

(2) TEMCO Portland: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone enclosed by three lines and the shoreline: line one starting on the shoreline at 45-32'10" N/122-40'34" W then heading 150 yards offshore to 45-32'09" N/122-40'39" W then heading up river 275 yards to 45-32'01" N/122-40'33" then heading 150 yards to the shoreline ending at 45-32'04" N/122-40'28" W.

(c) Effective period. The safety zones created in this section will be in effect from December 07, 2012 and will be enforced until 30 days from date of publication in the Federal Register. They will be activated for enforcement as described in paragraph (d) of this section.

(d) Enforcement periods. (1) The Sector Columbia River Captain of the Port will cause notice of the enforcement of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public as practicable, in accordance with 33 CFR 165.7. Such means of notification may include, but are not limited to, Broadcast Notices to Mariners or Local Notices to Mariners. The Sector Columbia River Captain of the Port will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of these safety zones is suspended.

(2) Upon notice of enforcement by the Sector Columbia River Captain of the Port the Coast Guard will enforce these safety zones in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Sector Columbia River Captain of the Port, all persons and vessels are authorized to enter, transit, and exit the safety zones, consistent with the Navigation Rules.

(e) Regulation. (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement

within these zones is prohibited unless authorized by the Sector Columbia River Captain of the Port, the official patrol, or other designated representatives of the Captain of the Port.

(2) To request authorization to enter or operate within these safety zones contact the on-scene official patrol on VHF-FM channel 16 or 13. Authorization will be granted based on the necessity of access and consistent with safe navigation.

(3) Vessels authorized to enter or operate within these safety zones shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol. The Navigation Rules shall apply at all times within the safety zones.

(f) Exemption. Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraph (e) of this section.

(g) Enforcement. Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer, or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In



addition, the Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this section.

(h) Waiver. The Sector Columbia River Captain of the Port may waive any of the requirements of this section for any vessel or class of vessels upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port safety or environmental safety.

Dated: December 7, 2012

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B. C. Jones  
Captain, U.S. Coast Guard  
Captain of the Port,  
Sector Columbia River

Date: 01/03/2013]